THE HON'BLE MR JUSTICE R. KANTHA RAO

REVIEW CMA M.P.NO.6352 OF 2008
AND
CMA NO.3873 OF 2002

DATED: 06.07.2012

Between:

Mohd Sazid Alias Syed Sajid

.. Petitioner/Appellant

And

K.Vijayalaxmi and another

.. Respondents/Respondents

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AND
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COMMON ORDER:

Heard the learned counsel appearing for the petitioner/appellant and the learned counsel appearing for the respondent No.2/insurance company.

2. The review petitioner/injured claimant filed this petition to review the order dated 24.01.2007 in C.M.A.No.3873 of 2002.

3. The appeal is filed by the injured claimant against the order dated 15.11.2000 passed by the Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad in O.P.No.1054 of 1998 challenging the award passed by the learned Tribunal on the ground that the compensation is not properly computed and the same is not just and reasonable and requires enhancement.

4. It is submitted by the learned counsel appearing for the review petitioner/appellant/claimant that as the owner of the offending vehicle remained exparte before the Tribunal below and the insurance company alone contested the claim case filed under Section 166 of the Motor Vehicles Act, no notice to the owner of the offending vehicle in the appeal is necessary, as the learned single Judge ought not to have

dismissed the CMA filed seeking enhancement of compensation for not taking notice to the owner of the offending vehicle. I agree with the submission made by the learned counsel that no notice to the owner of the offending vehicle in the appeal is necessary, as he remained exparte before the Tribunal. The order passed by the learned single Judge dismissing the CMA for default is therefore, set aside.

5. The petitioner-injured claimant was aged 13 years on the date of accident and while he was coming on cycle on 21.03.1998 at about 2.00 PM, a lorry bearing No.AP 27 T 2727 driven in a rash and negligent manner, dashed him, due to which he fell down and received severe injuries and his both legs were fractured and there is also fracture to the femur and also fracture to the pelvic. The medical evidence shows that the petitioner sustained fracture to the left femur and left thigh. The disability was considered by PW.3, the doctor who examined him, as permanent and partial and it was assessed by him at 40%. He was also advised future surgery. In the award, it is further indicated that the appellant sustained fracture of pelvic, and there is difficulty for the appellant to pass urine even after the treatment. The learned Tribunal granted Rs.10,000/- towards extra nourishment, Rs.19,000/- towards medical expenses and Rs.12,000/- for future surgery as claimed by the injured claimant in the claim petition and the said amounts need not be interfered with in the present appeal. The learned Tribunal, however, granted an amount of Rs.24,000/- for permanent disability. I am of the view that the learned Tribunal ought to have computed the compensation for the permanent disability basing on multiplier method taking the income of the claimant at Rs.15,000/- per annum which is the income of the non-earning persons mentioned

in the Second Schedule of the Motor Vehicles Act. The annual income of the claimant is Rs.15,000/-. He sustained permanent disability of 40%. As per the judgment in **SARALA VARMA AND OTHERS v DELHI TRANSPORT CORPORATION AND ANOTHER**[1] the relevant multiplier is '15'. The loss of earnings comes to Rs.15,000/- x 40/100 x 15 = Rs.90,000/-. The learned Tribunal awarded an amount of Rs.15,000/- for pain and suffering. In my view the amount granted by the Tribunal below is not adequate. Keeping in view, the condition in which the injured claimant has been placed in and in view of the fracture of both legs, it is very difficult for the claimant to walk and because of the fracture to the pelvic, he is not able to pass urine freely, therefore, an amount of Rs.50,000/- is granted to the claimant towards pain and suffering. This apart, the claimant is entitled for an amount of Rs.25,000/- towards loss of amenities in life. In addition to the above amounts, an amount of Rs.19,000/- granted by the Tribunal towards medical expenses and Rs.12,000/- granted for future surgery and Rs.10,000/- towards extra nourishment have to be added. The total compensation therefore, comes to Rs.2,06,000/-. The enhancement, therefore, would be Rs.2,06,000/- minus Rs.80,000/- = Rs.1,26,000/-, the interest granted by the learned Tribunal at the rate of 12% per annum from the date of petition till the date of realisation being on higher side is reduced to 7.5% per annum from the date of petition till the date of realisation.

6. With the above enhancement in the compensation amount and reduction in the rate of interest, the review petition filed by the claimant is allowed. The CMA filed seeking enhancement of compensation is

partly allowed. There shall be no order as to costs.

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Date: 06.07.2012 R. KANTHA
RAO, J
kvrm

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[1] 2009 ACJ 1298